

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NANCY WESTBURY,)	Case No.
)	
Plaintiff,)	PLAINTIFF’S COMPLAINT FOR
)	DAMAGES
v.)	(Unlawful Debt Collection Practices)
)	
)	
CAPITAL ONE BANK (USA), N.A.,)	
)	
Defendant.)	

COMPLAINT

NANCY WESTBURY (“Plaintiff”), by her attorneys, alleges the following against CAPITAL ONE BANK (USA), N.A. (“Defendant”):

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

PARTIES

2. Plaintiff is a natural person residing in the county of Hamilton, in the city of Hixson, Tennessee and is otherwise *sui juris*.

3. Defendant is a Virginia corporation doing business in the State of Tennessee and has its principal place of business in McLean, Virginia.

4. At all times relevant to this Complaint, Defendant has acted through its agents, employees, officers, members, directors, heir, successors, assigns, principals, trustees,

1 sureties, subrogees, representatives and insurers.

2
3 **JURISDICTION AND VENUE**

4 5. Defendant's principal place of business is in the state of Virginia, and therefore personal
5 jurisdiction is established.

6 6. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See,
7 *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and
8 state courts have concurrent jurisdiction over private suits arising under the TCPA.

9 7. Venue is proper in the United States District Court for the Eastern District of Virginia
10 pursuant to 28 U.S.C § 1391(b) because Defendant resides within this District.

11 **FACTUAL ALLEGATIONS**

12 8. Defendant is a "person" as defined by 47 U.S.C. § 153(39).

13 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
14 debts owed by Plaintiff.

15 10. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (770)
16 899-28XX.

17 11. Defendant placed collection calls to Plaintiff from phone numbers including, but not
18 limited to, (800) 955-6600.

19 12. Per its prior business practices, Defendant's calls were placed with an automated
20 telephone dialing system ("auto-dialer").

21 13. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. §
22 227(a)(1) to place its telephone calls to Plaintiff seeking to collect a consumer debt
23 allegedly owed by Plaintiff, NANCY WESTBURY.
24
25

1 14. Defendant's calls constituted calls that were not for emergency purposes as defined by
2 47 U.S.C. § 227(b)(1)(A).

3 15. Defendant's calls were placed to a telephone number assigned to a cellular telephone
4 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
5 227(b)(1).

6 16. Defendant never received Plaintiff's "prior express consent" to receive calls using an
7 automatic telephone dialing system or an artificial or prerecorded voice on his cellular
8 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

9 17. On February 28, 2018, at or around 9:19 a.m. Pacific Standard Time, Plaintiff spoke with
10 Defendant's female representative at phone number (800) 955-6600 and requested that
11 Defendant cease calling Plaintiff's cellular phone.

12 18. During the conversation, Plaintiff gave Defendant her name, social security number, and
13 date of birth to assist Defendant in accessing her account before asking Defendant to
14 stop calling her cell phone.

15 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular
16 telephone and/or to receive Defendant's calls using an automatic telephone dialing
17 system in his conversation with Defendant's representative on February 28, 2018.

18 20. Despite Plaintiff's requests to cease, Defendant continued to place automated collection
19 calls to Plaintiff through August 8, 2018.

20 21. Despite Plaintiff's requests to cease placing automated collection calls, Defendant placed
21 at least One hundred and Ninety-four (194) automated calls to Plaintiff's cell phone.
22

23 **FIRST CAUSE OF ACTION**
24 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
25 **47 U.S.C. § 227**

1 22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
2 forth above at Paragraphs 1-21.

3 23. The foregoing acts and omissions of Defendant constitute numerous and multiple
4 negligent violations of the TCPA, including but not limited to each and every one of the
5 above cited provisions of 47 U.S.C. § 227 et seq.

6 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is
7 entitled to an award of \$500.00 in statutory damages, for each and every violation,
8 pursuant to 47 U.S.C. §227(b)(3)(B).

9 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

10
11 **SECOND CAUSE OF ACTION**
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 et. seq.
12

13 26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
14 forth above at Paragraphs 1-21.

15 27. The foregoing acts and omissions of Defendant constitute numerous and multiple
16 knowing and/or willful violations of the TCPA, including but not limited to each and
17 every one of the above cited provisions of 47 U.S.C. § 227 et seq.

18 28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,
19 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
20 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

21 29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, NANCY WESTBURY, respectfully requests judgment be
25 entered against Defendant, CAPITAL ONE BANK (USA), N.A. for the following:

FIRST CAUSE OF ACTION

30. For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged herein (194), \$97,000.00;

31. Actual damages and compensatory damages according to proof at time of trial;

SECOND CAUSE OF ACTION

32. For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged herein (194), \$291,000.00;

33. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

34. Costs and reasonable attorneys' fees;

35. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

36. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

DATED: October 8, 2018

By: /s/ Francis Webb
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